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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

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9 Joe Hand Promotions Incorporated,
10 Plaintiff,
11 v.
12 Eleazar Ayala Alvarez,
13 Defendant.

No. CV-23-01924-PHX-DJH

ORDER

15 Plaintiff, Joe Hand Promotions, Inc. (“Plaintiff”), has filed a Motion for Default
16 Judgment. (Doc. 18). Defendant, Eleazar Ayala Alvarez, individually, and doing business
17 as (“d/b/a”) Cayomango (“Defendant”), failed to answer or otherwise defend (*Id.* at 2) after
18 receiving proper service and Default being entered (Docs. 11; 16). For the reasons set forth
19 below, Plaintiff’s Motion for Default Judgment is granted.

20 **I. Background**

21 Plaintiff filed suit for statutory damages under the Federal Communications Act of
22 1934, 47 U.S.C. §§ 553 and 605, on September 14, 2023. (*Id.* at ¶ 4). Defendant was
23 served on November 11, 2023. (Doc. 11). Because Defendant failed to answer, appear, or
24 otherwise respond (Doc. 18 at 2), Plaintiff applied for Entry of Default on February 20,
25 2024 (Doc. 15). The Clerk of the Court entered Default against Defendant on February 21,
26 2024. (Doc. 16). On February 18, 2025, Plaintiff filed the present Motion (Doc. 18) and
27 served a copy of the Motion on the Defendant by First Class US Mail (*Id.* at 3).

28 According to the Complaint, Plaintiff is a Pennsylvania corporation who

1 domestically distributes and licenses premier sporting events to various commercial
 2 businesses. (Doc. 1 at ¶¶ 1, 7). Through an agreement with DAZN Limited, Plaintiff held
 3 exclusive distribution rights to the *Canelo Álvarez vs. Gennady Golovkin III* broadcast
 4 (“Program”) televised on September 17, 2022. (Docs. 1 at ¶ 1; 18-3). Joe Hand
 5 subsequently entered into fee agreements with Arizona based commercial businesses,
 6 authorizing them to display the Program at their establishments. (Doc. 1 at ¶ 9).

7 The Complaint alleges that Defendant did not enter into a fee agreement with
 8 Plaintiff and, therefore, unlawfully presented the Program at Defendant’s commercial
 9 establishment, Cayomango, located in Mesa, Arizona. (*Id.* at ¶¶ 2, 10–11). More
 10 specifically, Plaintiff alleges that Defendant “willfully intercepted or received the interstate
 11 communications of the Program or assisted in such actions.” (*Id.* at ¶ 11). It is further
 12 alleged that Defendant’s wrongful conduct was motivated by an intent to obtain a
 13 “commercial advantage and . . . financial gain.” (*Id.* at ¶ 13).

14 In attempts to prevent unlawful conduct, Plaintiff employs third-party auditors to
 15 investigate various businesses and report unauthorized Program distribution. (Doc. 18-
 16 1 at 4). Plaintiff’s allegations are supported by the affidavit of an auditor who visited
 17 Cayomango on the night of the Program. (Doc. 18-5 at 1). According to Plaintiff’s
 18 auditor, Amanda Hidalgo (“Hidalgo”), the Program was displayed on two televisions
 19 within the establishment to roughly fifty-nine to sixty-one patrons, based on two separate
 20 head counts. *Id.* Hidalgo observed the DAZN Limited logo displayed on the screen while
 21 the Program aired. *Id.* Hidalgo did not pay a cover charge upon entrance into the
 22 establishment. *Id.* Hidalgo estimated the establishment’s capacity to accommodate
 23 approximately 100 patrons. *Id.*

24 Defendant is alleged to have violated § 605 or, alternatively, § 553.
 25 (Doc. 1 at ¶¶ 16–17). Plaintiff seeks statutory damages up to \$110,000.00¹ for each willful
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27 ¹ Plaintiff’s Complaint requested up to the maximum amount under § 605, which includes
 28 both the maximum statutory amount of \$10,000.00 and the maximum enhanced damages
 amount of \$100,000.00. (Doc. 1 at 5; § 605).

1 violation under § 605 or, alternatively, for statutory damages up to \$60,000.00² for each
 2 willful violation under § 553. (*Id.* at 5). Attorneys' fees, interest, and costs incurred under
 3 § 605 or, alternatively, under § 553, were also requested. *Id.* However, Plaintiff's Motion
 4 for Default Judgment elects to recover solely under § 605. (Doc. 18-1 at 7). Specifically,
 5 Plaintiff seeks statutory damages of \$10,000.00 under § 605(e)(3)(C)(i)(II), as well as
 6 \$20,000.00 in enhanced damages under § 605(e)(3)(C)(ii). (*Id.* at 16). In addition to
 7 damages, Plaintiff seeks recovery from costs and coverage of attorneys' fees under
 8 § 605(e)(3)(B)(iii). (*Id.*; Doc. 18-6 at ¶ 9).

9 **II. Jurisdiction**

10 Plaintiff's Complaint invokes a federal cause of action under the Communications
 11 Act of 1934, so this Court has subject matter jurisdiction. Additionally, Plaintiff alleges
 12 Defendant is an Arizona resident and Defendant's conduct occurred within the State of
 13 Arizona. (*Id.* at ¶¶ 2–3). Thus, this Court has personal jurisdiction over the Defendant.

14 **III. Legal Standard**

15 Since proper default has been entered under Fed. R. Civ. P. 55(a), the defaulting
 16 party is deemed to have admitted all factual allegations within the complaint, except those
 17 relating to damages. *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Fed.
 18 R. Civ. P. 55(b)(2) governs the entry of default judgment, and courts have discretionary
 19 power to grant, or deny, the Plaintiff's motion. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092
 20 (9th Cir. 1980). In exercising its discretionary power, courts consider the following *Etel*
 21 factors: (1) the possibility of prejudice to the plaintiff; (2) the merits of the claims; (3) the
 22 complaint's sufficiency; (4) the amount of money at stake; (5) the possibility of a dispute
 23 regarding material facts; (6) whether default was due to excusable neglect; and (7) the
 24 policy favoring a decision on the merits. *Etel v. McCool*, 782 F.2d 1470, 1471–72 (9th
 25 Cir. 1986).

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 28 ² Plaintiff's Complaint requested up to the maximum amount under § 553, which includes both the maximum statutory amount of \$10,000.00 and the maximum enhanced damages amount of \$50,000.00. (Doc. 1 at 5; § 553).

1 **IV. Analysis—The *Eitel* Factors**

2 **A. Possible Prejudice to Plaintiff**

3 The first *Eitel* factor weighs in favor of granting the Plaintiff's Motion. Because
 4 Defendant has failed to respond, Plaintiff would have no alternative means to resolve the
 5 present action, but for the entry of default judgment. (Doc. 18 at 2). *See PepsiCo, Inc. v.*
 6 *California Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002). Therefore, Plaintiff
 7 will be prejudiced if the case remains pending. So, the first *Eitel* factor supports granting
 8 Plaintiff's Motion for Default Judgment.

9 **B. Merits of the Claims and Sufficiency of the Complaint**

10 Factors two and three support the entry of default judgment. When analyzing the
 11 *Eitel* factors, the “merits of plaintiff's substantive claims and the sufficiency of the
 12 complaint” are commonly analyzed concurrently. *Dr. JKL Ltd. v. HPC IT Educ. Ctr.*, 749
 13 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010). If the complaint states a claim upon which the
 14 plaintiff may recover, the factors weigh in favor of default judgment. *Id.*; *PepsiCo, Inc.*,
 15 238 F. Supp. 2d at 1175. Under § 605(a), no unauthorized individual “shall intercept any
 16 radio communication and . . . publish” said communication to another.
 17 47 U.S.C. § 605(a). Additionally, an unentitled individual shall not “receive or assist in
 18 receiving” any communication and subsequently use the communication “for his own
 19 benefit or for the benefit of another [unentitled individual].” *Id.*

20 Here, Plaintiff alleges a violation of § 605, claiming that Defendant did not contract
 21 with Plaintiff to exhibit the Program. (Doc. 1 at ¶ 10). Plaintiff also alleges that Defendant
 22 willfully obtained and unlawfully published the Program to guests of Cayomango for
 23 “commercial advantage and . . . financial gain,” thereby infringing on Plaintiff's exclusive
 24 distribution rights. (Doc. 1 at ¶ 11, 13). Moreover, Plaintiff's allegations are substantiated
 25 by an auditor's affidavit (Doc. 18-5) and signed documentation demonstrating Plaintiff's
 26 exclusive distribution rights to the Program (Doc. 18-3).

27 Thus, Plaintiff has sufficiently established exclusive distribution rights and has
 28 demonstrated that Defendant exhibited the Program without prior authorization.

1 Therefore, Plaintiff has sufficiently pled a claim for violation of § 605 and has stated a
 2 plausible claim for relief. *See* § 605(e)(3)(A) (stating that unauthorized interception and
 3 subsequent use of radio communication for personal gain permits an aggrieved party to
 4 bring a civil action filed in a United States District Court). The second and third factors
 5 weigh in favor default judgment.

6 **C. Amount of Money at Stake**

7 The fourth *Etel* factor supports default judgment. When evaluating this factor,
 8 courts consider the amount of money concerned in relation to the seriousness of the
 9 defendant's alleged conduct. *PepsiCo, Inc.*, 238 F. Supp. 2d at 1176. The monetary
 10 amount concerned must be proportionate, otherwise default judgment is disfavored.
 11 *Twentieth Century Fox Film Corp. v. Streeter*, 438 F. Supp. 2d 1065, 1071 (D. Ariz. 2006).
 12 Although Plaintiff alleges Defendant is liable under both §§ 553 and 605, an aggrieved
 13 party may only recover damages under one section. *Kingvision Pay-Per-View Corp., LTD.*
 14 *v. Wright*, 2006 WL 4756450 at *2 (M.D. Fla. Oct. 27, 2006).

15 Plaintiff elects to recover damages solely under § 605. (Doc. 18-1 at 7). For each
 16 violation, § 605 allows an award of statutory damages between \$1,000.00 and \$10,000.00.
 17 § 605(e)(3)(C)(i)(II). If such violations are found to be committed "willfully and
 18 for . . . commercial advantage or private financial gain," the statute allows for an award of
 19 enhanced damages up to \$100,000.00. *Id.* § 605(e)(3)(C)(ii). Additionally, courts shall
 20 award the prevailing party recovery of full costs, including "reasonable" attorneys' fees
 21 associated with the action. *Id.* § 605(e)(3)(B)(iii).

22 Here, Plaintiff requests \$10,000.00 in statutory damages and \$20,000.00 in
 23 enhanced damages under § 605. (Doc. 18-1 at 8). Additionally, Plaintiff seeks recovery
 24 of \$537.00 for costs incurred during this action. (*Id.* at 16; Doc. 18-6 at ¶ 9). Finally,
 25 Plaintiff requests leave to submit attorneys' fees. (Doc. 18-6 at ¶ 8).

26 Plaintiff's Motion for Default Judgment states compelling arguments in support of
 27 damages sought. Additionally, Plaintiff declares that the Program "cannot be mistakenly,
 28 innocently, or accidentally intercepted," indicating Defendant willfully and unlawfully

1 displayed the Program. (Doc. 18-2 at ¶¶ 15, 19). The Motion also included an auditor's
 2 affidavit, in which the auditor attests to appearing at Defendant's establishment on the date
 3 of the Program exhibition. (Doc. 18-5 at 1). The auditor observed the Program being
 4 broadcasted on two televisions and estimated that approximately fifty-nine to sixty-one
 5 patrons were in attendance. *Id.* Because Defendant lacked authorization, Defendant
 6 immediately profited \$2,150.00—the amount it would have cost to sublicense the Program.
 7 (Doc. 18-1 at 15). Moreover, Defendant arguably received increased profits from patron
 8 sales during the broadcasting of the Program. *Id.* Therefore, Defendant obtained a
 9 commercial advantage and financial gain. *Id.*

10 At first glance, the total amount at stake may appear disproportionate, as the
 11 sublicensing fee would have cost Defendant \$2,150.00. However, the requested
 12 \$10,000.00 in statutory damages, \$20,000.00³ in enhanced damages, \$537.00 in filing and
 13 services fees, and the request to submit attorneys' fees all fall within the statutory limits of
 14 § 605(e). *See* § 605(e) (stating that prevailing parties may recover statutory damages up to
 15 \$10,000.00 per violation, enhanced damages up to \$100,000.00 per violation, costs, and
 16 attorneys' fees). In addition, Plaintiff's Memorandum of Points and Authorities cites to
 17 several recent cases in this District court that have been awarded identical statutory
 18 damages for § 605 violations.⁴ (Doc. 18-1 at 8–9). Therefore, this factor supports an entry
 19 of default judgment against the Defendant.

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23 ³ Despite Plaintiff's request of \$20,000.00 in enhanced damages, the Court is awarding a
 24 reduced amount of \$15,000.00. *See infra* Section V.

25 ⁴ *See Joe Hand Promotions Inc. v. Picklou LLC et al.*, 4:23-cv-00111-JAS, ECF No. 12 (D.
 26 Ariz. Feb. 14, 2025) (awarding \$10,000.00 in statutory damages and \$20,000.00 in
 27 enhanced damages); *G & G Closed Circuit Events, LLC v. Ayala*, 2023 WL 4269637, at
 28 *5 (D. Ariz. June 29, 2023) (awarding \$10,000.00 in statutory damages and \$20,000.00 in
 enhanced damages); *Joe Hand Promotions Inc. v. Alhamedany*, 2019 WL 4394885 (D. Ariz.
 Sept. 13, 2019), report and recommendation adopted, 2019 WL 4394533 (D. Ariz.
 Sept. 13, 2019) (awarding \$10,000.00 in statutory damages and \$20,000.00 in enhanced
 damages); *Joe Hand Promotions Inc. v. La Salsita LLC, et al.*, 2:19-cv-00379-GMS, ECF
 No. 25 (D. Ariz. Aug. 29, 2019) (awarding \$10,000.00 in statutory damages and
 \$20,000.00 in enhanced damages).

D. Potential Dispute Concerning Material Facts

The fifth *Etel* factor supports the entry of default judgment. Upon the entry of default, factual allegations within the Complaint—except those relating to damages—are deemed true. *Geddes*, 559 F.2d at 560 (9th Cir. 1977). Because Defendant has failed to respond to the Plaintiff's Complaint, Motion for Default, and Motion for Default Judgment, there is no dispute of material facts. Accordingly, this factor weighs in favor of the entry of default judgment.

E. Excusable Neglect

The sixth factor supports the entry of default judgment as there is no evidence indicating Defendant’s Default was due to excusable neglect. Defendant was served with the Summons and Complaint on November 11, 2023. (Doc. 11). Corresponding copies were also mailed to Defendant’s last known address. *Id.* Additionally, Defendant was served by First Class US Mail, on February 18, 2025, with a copy of Plaintiff’s Motion for Default Judgment. (Doc. 18 at 3). In support, Plaintiff’s counsel asserted that “[n]either Defendant [] nor anyone claiming to represent [the Defendant]” has appeared in this action. (Doc. 15 at 1–2). Because Defendant has failed to appear or otherwise respond to the current action, it is unlikely that Defendant’s Default was due to excusable neglect. *See J & J Sports Productions, Inc. v. Arvizu*, 2018 WL 905139, at *3 (D. Ariz. Feb. 15, 2018) (stating that defendants’ failure to respond and the subsequent default was “unlikely” due to excusable neglect). Accordingly, this factor supports default judgment.

F. Policy Favoring a Decision on the Merits

The final *Etel* factor weighs in favor of the entry of default judgment. Whenever feasible, cases should be decided on their merits. *Eitel*, 782 F.2d at 1472. However, the mere existence of Fed. R. Civ. P. 55(b) indicates that the preference of deciding cases on the merits is not absolute. *PepsiCo, Inc.*, 238 F. Supp. 2d at 1177. Moreover, Defendant's failure to respond or otherwise appear deems a decision on the merits impracticable, if not unachievable. See e.g., *Dr. JKL Ltd.*, 749 F. Supp. 2d at 1051 (finding a decision on the merits was "likely impossible" where defendant failed to comply with the judicial process).

1 Thus, this factor supports entry of default judgment.

2 **V. Damages**

3 In the context of default judgment, where actual damages are difficult to
 4 substantiate, statutory damages are appropriate. *Lauratex Textile Corp. v. Allton Knitting*
 5 *Mills Inc.*, 519 F. Supp. 730, 732 (S.D.N.Y. 1981); *Evony, LLC v. Holland*, 2011 WL
 6 1230405 at *3 (W.D. Pa. Mar. 31, 2011). Despite the lack of evidence of repeated
 7 violations, no evidence that Defendant advertised the Program, and no evidence that
 8 Defendant charged an entrance fee or increased food and beverage costs, this Court remains
 9 cognizant of enhanced damages serving as a deterrent. Additionally, Plaintiff has
 10 established extensive harm caused by Defendant's conduct and demonstrated a need for a
 11 damages award to function as a necessary deterrent. (*Id.* at 11–12). Thus, this Court is
 12 inclined to award the Plaintiff \$10,000.00 in statutory damages, along with enhanced
 13 damages in the reduced amount of \$15,000.00.⁵ While Plaintiff cites recent cases with
 14 damage awards consistent with their requests, the referenced cases involved different facts,
 15 including varying patron capacities, additional televisions screening the program, and
 16 published promotional advertisements. *See supra* Section IV.C, fn.4.

17 **VI. Conclusion**

18 In conclusion, the *Eitel* analysis strongly supports granting Plaintiff's Motion for
 19 Default Judgment. *See Eitel*, 782 F.2d at 1471–72 (explaining the factors courts consider
 20 regarding entry of default judgment).

21 Accordingly,

22 **IT IS HEREBY ORDERED** that the Motion for Default Judgment (Doc. 18) is
 23 granted. Judgment shall be entered against Defendant, Eleazar Ayala Alvarez,
 24 individually, and d/b/a Cayomango, in the amount of \$25,000.00 under § 605.

25 **IT IS FURTHER ORDERED** that Plaintiff shall recover costs in the amount of

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 27 ⁵ However, had Plaintiff requested excessively higher damages, the Court would apply
 28 more scrutiny as it is aware of the Plaintiff's reoccurring suits. *See Joe Hand Promotions,*
Inc. v. Streshly, 655 F. Supp. 2d 1136, 1139 (S.D. Cal. 2009) (stating that the court would
 not cater to Plaintiff's attempt to receive the largest conceivable award by filing "cookie-
 cutter pleadings").

1 \$537.00 under § 605(e)(3)(B)(iii).

2 **IT IS FURTHER ORDERED** that Plaintiff may submit a request for attorneys'
3 fees within fourteen days of the entry of this Order.

4 **IT IS FINALLY ORDERED** that the Clerk of Court shall enter judgment
5 accordingly.

6 Dated this 18th day of June, 2025.

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Honorable Diane J. Humetewa
United States District Judge